

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSEPH TORRES, JR.,

Case No. 3:16-cv-00030-MMD-VPC

Petitioner,

ORDER

v.

RENEE BAKER, et al.,

Respondents.

Petitioner has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. (Dkt. no. 1-1.) Petitioner filed an application to proceed *in forma pauperis*, but he has not submitted the required completed financial certificate or inmate account statements. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six (6) months and a properly executed financial certificate.

Further, petitioner indicates on the face of his petition that this is a successive petition challenging his judgment of conviction in state-court case no. 64902 (dkt. no. 1-1 at 2). 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Where a petition has been dismissed with prejudice as untimely or

1 because of procedural default, the dismissal constitutes a disposition on the merits and  
2 renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244.  
3 *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*,  
4 396 F.3d 1049, 1053 (9th Cir. 2005). Here, petitioner indicates that he is currently  
5 seeking leave from the Ninth Circuit Court of Appeals to file a successive petition. Even  
6 if petitioner had filed a fully completed application to proceed *in forma pauperis*, his  
7 petition would be subject to dismissal because he has not yet obtained leave from the  
8 court of appeals to file this successive petition.

9 It is therefore ordered that the application to proceed *in forma pauperis* (dkt. no.  
10 1) is denied and this action is dismissed without prejudice to the filing of a new petition  
11 in a new action with a properly completed application form to proceed *in forma pauperis*.

12 It is further ordered that a certificate of appealability is denied, as jurists of reason  
13 would not find the Court's dismissal of this improperly commenced action without  
14 prejudice to be debatable or incorrect.

15 It is further ordered that the Clerk send petitioner two (2) copies each of an  
16 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital  
17 Section 2254 habeas petition form, one (1) copy of the instructions for each form, and a  
18 copy of the papers that he submitted in this action.

19 It is further ordered that the Clerk enter judgment accordingly and close this  
20 case.

21 DATED THIS 15<sup>th</sup> day of April 2016.



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23  
24 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE